PLEADING AND PRACTICE—COUNTERCLAIM.—The plaintiff brings a suit in equity for the recovery of 90 shares of stock to which the plaintiff claimed to be entitled by virtue of a contract between himself and the defendant. The defendant interposes a counterclaim for $35,000 for the failure of the plaintiff to deliver some of the machinery and for defects in that which was delivered. *Held,* one judge dissenting, that the counterclaim was proper. *Maag* v. *Maag Gear Co.* (1st Dept. 1920) 193 App. Div. 759, 184 N. Y. Supp. 630.

The purpose of the codes in creating counterclaims was to avoid circuity of action; consequently the courts interpret the codes liberally in order to effectuate that purpose. See *North Chicago Rolling Mill Co.* v. *St. Louis Ore & Steel Co.* (1894) 152 U. S. 596, 615, 14 Sup. Ct. 710; *Scott* v. *Waggoner* (1914) 48 Mont. 536, 543, 139 Pac. 454. And so, where, as in New York, the Code of Civil Procedure (§501) provides that the defendant may plead as a counterclaim "a cause of action arising out of the contract or transaction. . . or connected with the subject of the transaction," or "in an action on a contract any other cause of action on contract existing at the commencement of the action", a defendant may plead as a counterclaim to a contract action a cause of action sounding in tort. *Cf. Advance Thresher Co.* v. *Klein* (1911) 28 S. Dak. 177, 133 N. W. 51; *Scott* v. *Waggoner, supra.* Although where the tort does not arise out of and is in no wise connected with the action, it may not be asserted as a counterclaim. *Kuhn* v. *Heavenrich Co.* (1902) 115 Wis. 447, 91 N. W. 994. In some few jurisdictions a defendant may even plead as a counterclaim to a tort action a cause of action sounding in tort on the ground that the entire physical encounter is the entity giving rise to the plaintiff's cause of action. *Powell* v. *Powell* (1915) 160 Wis. 504, 152 N. W. 168; *Hackney* v. *Fetsch* (1913) 123 Minn. 447, 143 N. W. 1128; *contra, Adams* v. *Schwartz* (1910) 137 App. Div. 230, 122 N. Y. Supp. 41. But even under *Adams* v. *Schwartz,* if the defendant's counterclaim involves the same issues as the plaintiff's cause, the counterclaim may be set up. *Deagan* v. *Weeks* (1901) 67 App. Div. 410, 73 N. Y. Supp. 641. In an action to obtain a specific chattel a defendant may plead as a counterclaim a cause of action giving rise to money damages. *Holmberg* v. *Will* (1915) 52 Okla. 745, 153 Pac. 832. Many jurisdictions do not allow such counterclaims on the ground that they do not "tend to diminish or defeat the plaintiff's recovery," since to give the defendant damages does not affect the plaintiff's right to the chattel. *Glide* v. *Kayser* (1904) 142 Cal. 419, 76 Pac. 50. In the instant case the counterclaim arises out of the contract upon which the plaintiff bases his action. In sustaining the counterclaim the court is following the better view in that, in accord with the purpose of the code, it avoids multiplicity of suits and possible injustice.

PLEADING AND PRACTICE—PAYMENT INTO COURT—COMMUNICATION OF FACT TO JURY.—The plaintiff claimed £1153 as damages in his complaint. The defendant admitted its liability and paid £500 into court to meet the plaintiff's claim. The plaintiff refused to accept this and the question of damages was left to the jury. Counsel for the plaintiff asked leave to communicate to the jury the amount paid into court. *Held,* neither the amount paid into court, nor the fact that there has been such payment may be communicated to the jury. *Flavell* v. *Christ Church Tramway Board* [1920] N. Z. L. R., Part II, 127.

The original purpose and effect of paying money into court was to avoid the difficulty and hazard of pleading a tender. It was confined at first to actions of debt. Chase, Blackstone's *Commentaries,* (4th ed. 1914) 775. It was extended in England in 1833 to some personal actions for damages. Civil Procedure Act, 3 & 4 Will. IV, c. 42, § 21. The rule that when payment is made into court no communication shall be made to the jury of the payment or of the amount was adopted in England in 1893. Rules, Sup. Ct.,

Order XXII, R. 22. This rule was held not to be *ultra vires* since it related only to procedure. *Williams* v. *Goose* [1897] 1 Q. B. 471. The amount may not be mentioned even though liability is admitted. *Jacques* v. *S. Essex Waterworks Co.* (1904) 20 T. L. R. 563. This is because the defendant admits liability to some extent but not to the amount paid in. In the United States the question has not arisen, as a tender to be effective must be kept good, and must be supported by bringing the money into court at the time of pleading. *O'Riley* v. *Suver* (1873) 70 Ill. 85. Such a tender into court, unlike payment under the English practice, is an admission of indebtedness to that amount. *Wilson* v. *Doran* (1888) 110 N. Y. 101, 17 N. E. 688. There is no reason, therefore, why the payment into court and the amount should not be communicated to the jury in this country.

REAL PROPERTY—DESTRUCTION OF CONTINGENT REMAINDERS—EFFECT OF WARRANTY.—A, reserving a life estate for himself, conveyed certain lands by warranty deed to B for life, with contingent remainders over. C subsequently purchased all A's interest at a sheriff's sale, and D in the same manner acquired B's estate. C, by separate deeds, conveyed to D the life estate and reversion in fee, reciting a purpose to defeat the contingent remainders. D. conveyed back to C an undivided one-fifth interest in fee. C brings a bill for partition, and the contingent remaindermen defend. *Held,* two judges dissenting, that C was estopped by the warranty of A to defeat the contingent remainders, C's interest in the reversion, therefore, remaining separate from the life estate and subject to the contingency named. *Biwer* v. *Martin* (Ill. 1920) 128 N. E. 518.

The common law rule of merger, defeating contingent remainders, operated inexorably. *Archer's Case* (1597) 1 Co. 66b; *Egerton* v. *Massey* (1857) 3 C. B. (N. S.) 338; *Bond* v. *Moore* (1908) 236 Ill. 576, 86 N. E. 386. The courts, heeding intention, made but two exceptions to this rule: where two estates were created and vested in one person by the same instrument; and where the devisee of a life estate acquired the reversion in fee by descent from his testator. See Challis, *Real Property* (3rd ed. 1911) 137, 138; 2 Reeves, *Real Property* (1909) § 903, n. 1; 1 Tiffany, *Real Property* (2nd ed. 1920) § 140. Equity did not favor the defeat of contingent remainders. See 1 Fearne, *Contingent Remainders* (10th ed. 1844) 337. But in *Mansell* v. *Mansell* (1732) 2 P. Wms. 678, the court declared that the joinder of trustees to preserve contingent remainders in a tortious conveyance of the life estate constituted a breach of trust. For this the trustees and all except *bona fide* purchasers for value were liable in equity, whenever the contingency occurred. Nevertheless, the legal effect of such a breach of trust was to obliterate the contingent remainders. In the instant case the court gave a novel effect to the warranty. Traditionally a warranty required a supporting estate. See Rawle, *Covenants for Title* (3rd ed. 1860) 436. Contingent remainders were never "estates". See Fearne, *op. cit.* 2b, Butler's Note; Challis, *op. cit.* 86; 1 Tiffany, *op. ct.* §§ 136, 137, 140; Williams, Real Property (23rd ed. 1920) 400. They crept into our law comparatively late. See Y. B. 9 Hen. VI, Trin. Term Pl. 19 (1430); Williams, *op. cit.* 386. Long regarded as mere posssibilities, the utmost dignity ever conceded to them by the courts was the status of "a possibility coupled with an interest". See *Roe dem. Perry* v. *Jones* (1788) 1 H. Black. 30, *aff'd* (1789) 3 T. R. 88; 2 Bl. *Comm.* 169; 2 Reeves, *op. cit.* § 873 (b); 1 Tiffany, *op. cit.* §§ 136, 137. Under modern social conditions we give the label "contingent remainder" to something radically different from the common law concept. What we know to-day as a contingent remainder has, in most jurisdictions, the more important characteristics of a common